

# ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original    ☐ Updated    ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATPC 99, Grain Dealers and Grain Warehouse Keepers; Ch. ATPC 100, Milk Contractors; Ch. ATPC 101 Vegetable Contractors

Subject

Agricultural Producer Security Fund Assessment

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

☐ GPR    ☐ FED    ☐ PRO    ☐ PRS    ☒ SEG    SEG-S

20.115(1)(q)

Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect  
☐ Indeterminate

☐ Increase Existing Revenues  
☒ Decrease Existing Revenues

☐ Increase Costs  
☐ Could Absorb Within Agency's Budget  
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes    ☒ No

Policy Problem Addressed by the Rule

## General

The Agricultural Producer Security Fund ("Fund") is a public trust administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection ("Department"). Milk contractors, grain dealers, grain warehouse keepers and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, and vegetables, respectively, from producers, and most contractors are required to contribute to the Fund annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment or fails to return grain held in storage. Funds from each industry are accounted for separately with mandated minimums and maximums but deposited into one overall fund. Wis. Stat. Chapter 126.88 (1) (a) establishes the overall fund balance must be at least \$5 million, but not more than \$22 million.

	Minimum Statutory Balance	Actual Balance as of June 30, 2016	Maximum Statutory Balance
Grain Dealers	\$ 1,000,000	\$ 5,546,281.97	\$ 6,000,000
Grain Warehouse Keepers	\$ 200,000	\$ 46,432.94	\$ 1,000,000
Milk Contractors	\$ 3,000,000	\$ 6,132,665.50	\$ 12,000,000
Vegetable Contractors	\$ 800,000	(\$ 4,707,617.97)	\$ 3,000,000
<b>Entire Fund</b>	<b>\$ 5,000,000</b>	<b>\$ 7,017,762.44</b>	<b>\$ 22,000,000</b>

In 2014, the Fund paid out claims to 19 vegetable producers due to a payment default by one large vegetable contractor that went bankrupt. The default payment totaled \$6.1 million, causing the overall fund balance for all producers to drop by almost half. This resulted in a fund balance deficit attributable to the vegetable program of over \$4.8 million at the time. The following year, a \$1 million default in the milk industry further drew down the Fund.

The Department and the Agricultural Producer Security Council ("Council"), a statutory council created to

advise the Department, identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. In December, 2015, the Department received an actuarial study of the Fund and began working with the Council to develop recommendations for permanent changes to the agricultural producer security program.

#### *ATCP 99 - Grain*

Wis. Stat. § 126.88 (1) (b) and (c) establishes that the Fund maintain a balance attributable to grain dealers of at least \$1 million, but not more than \$6 million, and maintain a balance attributable to grain warehouse keepers of at least \$200,000, but not more than \$1 million. The Department anticipates the grain dealer balance to reach the statutory maximum balance in the near future.

#### *ATCP 100 - Milk*

Wis. Stat. § 126.88 (1) (d) establishes that the Fund maintain a balance attributable to milk contractors of at least \$3 million but not more than \$12 million. Based on the recent actuarial study, the milk contractors' assessment rates are higher than those in the other two industries.

#### *ATCP 101 - Vegetable*

Wis. Admin. Code ATCP 101.245 establishes a vegetable contractor fund assessment. The amount of the assessment varies based on a combination of contract obligations and financial ratios under Wis. Stat. § 126. Per s. 126.88 (1) (e), Stats., the vegetable contractors' portion of the Fund should maintain a balance of at least \$800,000, but not more than \$3 million. Due to recent defaults in the vegetable industry, the vegetable portion of the Fund balance is an approximate \$4.7 million deficit.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

### **General**

Members of the Council, as defined in Wis. Stats. § 15.137 (1), have worked with the Department in crafting certain rule changes following the 2015 actuarial study. Local governments are not involved with the Fund, and therefore, were not consulted in this economic impact analysis.

#### *ATCP 99 - Grain*

The proposed rule would implement a reduction in assessments from approximately \$974,000 to \$256,000 whenever the grain dealer portion exceeds the \$6 million statutory maximum. This rule amends Wis. Admin. Code ATCP 99.126 (2) and repeals and recreates Wis. Admin. Code ATCP 99.126 (3) to include an automatic reduction in the rate applied to grain dealers whenever the grain dealer portion of the Fund exceeds the \$6 million statutory maximum.

The Fund mechanisms do not change. In terms of revenues, the Department expects to receive \$718,000 less due to the proposed rule changes. Since the collection procedure itself does not change, the Department does not foresee any changes in compliance or implementation costs.

#### *ATCP 100 - Milk*

The proposed rule change adds the multiplier, 0.8, to Wis. Admin. Code ATCP 100.135 (1). This would result in a reduction of the projected assessments for 2017-18 from \$1,095,000 to \$859,000. The actuarial study projects growth in the milk portion of the Fund of \$373,000 per year over the next ten years. Using the multiplier results in a \$236,000 assessment reduction and reduces that pace of growth to \$137,000 per year. Effectively, this slows the growth of the milk producers' portion of the Fund. Since the Department already collects assessments, no change in compliance or implementation costs should occur under changes proposed to the rule.

### *ATCP 101 - Vegetable*

Contributing vegetable contractors will be affected by paying higher fund assessments. Vegetable contractors who purchase potatoes for processing and have opted out of contributing to the Fund would not be affected because vegetable contractor assessments are being increased to replace money paid as a result of a large vegetable contractor default, the higher Fund balance that results from this increase will affect all producers in Wisconsin by making more money available for future defaults.

The proposed rule amends Wis. Admin. Code ATCP 101.245 to implement three changes: (1) add an assessment of 0.2% multiplied by contract obligations, net of waiver, with a \$50,000 cap; (2) sunset after the vegetable portion of the Fund reaches the statutory minimum of \$800,000 under Wis. Stats. § 126.88 (1) (e); and (3) reduce the assessment by 50% for any vegetable contractor, if all contracts with producers have 30-day payment terms.

This would result in assessment of about \$254,000 annually if all contracts payment terms were beyond 30 days. Since the Department already collects assessments, no change in compliance or implementation costs should occur under any changes proposed to the rule.

#### Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

### *ATCP 99 - Grain*

#### Benefits

By adopting the automatic assessment reduction provision of the rule, the grain dealer portion of the Fund would begin to decline whenever it exceeds its statutory maximum of \$6 million because the reduction in assessments would result in expenses for the grain dealer program that would exceed their revenues. Without it, the grain dealer portion would increase well beyond the statutory maximum.

#### Alternatives

Do nothing. If the Department fails to adopt this rule, the Department anticipates it will exceed its statutory requirement for the grain dealer industry portion of the Fund.

### *ATCP 100 - Dairy*

#### Benefits

By adopting the 0.8 multiplier, the Department slows the growth of the milk portion of the Fund and provides some financial relief to contributing milk contractors.

#### Alternatives

Do nothing. If the Department fails to adopt this rule milk contractor contributions to the Fund would continue to be disproportionately higher than other three industries.

### *ATCP 101 - Vegetable*

#### Benefits

The proposed rule will increase fund assessments from contributing vegetable contractors in order to meet the statutory requirement to maintain a minimum Fund balance.

#### Alternatives

Do nothing. If the Department fails to adopt this rule, the Department will not meet its statutory requirement and the vegetable contractor portion of the Fund will remain in a significant deficit while vegetable growers would continue to receive the benefits of coverage under the overall Fund.

#### Long Range Implications of Implementing the Rule

### **General**

Due to the minimums and maximums created by Wis. Stats. § 126, each portion should be in alignment to sustain the long-term benefits of the entire Fund.

#### *ATCP 99 - Grain*

The grain dealer portion of the Fund is near its maximum. Therefore, the Department expects grain dealers will soon receive automatic reductions and collections would become minimal until their portion of the Fund declines below the maximum.

#### *ATCP 100 - Milk*

Adoption of the multiplier, 0.8, will slow the growth of the milk contractors' portion of the Fund while keeping the balance sufficient to cover anticipated defaults.

#### *ATCP 101 - Vegetable*

If the Department fails to adopt this rule, the Department will not meet its statutory requirement and the vegetable contractor portion of the Fund will continue in a significant deficit while vegetable growers continue to receive the benefits of coverage under the overall Fund. As it stands, with adoption of the proposed rule changes, the Department anticipates the Fund will still not reach the minimum for vegetable contractors for 18 years, provided there are no further defaults.

#### Compare With Approaches Being Used by Federal Government

#### *ATCP 99 - Grain*

The United States Warehouse Act is a voluntary regulatory program administered by Farm Service Agency ("FSA"), a unit within USDA. Under the Act, warehouse keepers who obtain a warehouse license must comply with several FSA regulations. Generally, the warehouse keeper must maintain enough grain in inventory to cover 100% of depositor obligations at all times. Further, FSA licensed warehouse keepers must submit financial statements, submit to inspections by USDA auditors, and post surety bonds. In the event a warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. The federal grain warehouse license is officially a voluntary program; in practice, it is not completely voluntary. Every state that has significant grain production (including Wisconsin) has some type of state grain warehousing law. These laws require grain warehouse keepers to obtain a license but allow them to choose either a state license or a federal license. Those that choose a federal license are exempt from the state licensing program.

#### *ATCP 100 - Milk*

No federal programs currently exist that offer milk producer security from contractor payment defaults.

#### *ATCP 101 - Vegetable*

The Perishable Agricultural Commodities Act ("PACA") is a federal program that provides some protections for vegetables. This program consists of a priority lien against vegetable-related assets and is applicable to fresh vegetables based on a complex set of variables and circumstances. Wisconsin's vegetable security program applies only to processing vegetables. Wisconsin's program uses an indemnity fund, rather than a priority lien-type program.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

#### Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

#### *ATCP 99 - Grain*

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa all require persons who buy grain from producers to obtain a grain dealer license, and all persons who store grain for others are required to obtain either a state or federal grain warehouse license. Licensees must file financial statements with the state, and the warehouses must maintain 100% of depositor-owned grain in inventory at all times.

Minnesota requires grain dealers and grain warehouse keepers to post bonds with the state. Indiana, Illinois, and Iowa all have a state indemnity fund that is made up of grain dealer and warehouse assessments. Michigan (like Wisconsin) has a combination of bonds and indemnity fund contributions.

#### *ATCP 100 - Milk*

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers or farmers of milk, cream, or products made from milk or cream, to be licensed as a Wholesale Produce Dealer. Dealers are required to obtain a surety bond and required to maintain trust assets so that assets are freely available to satisfy outstanding obligations. There is no exemption to this requirement.

Michigan requires producer security for all manufacturing and Grade A dairy plants that are a first receiving point for raw milk that will be processed at that facility. Security can be in one or more of several forms including bond, letter of credit, certificate of deposit, or pre-payment. There is no exemption to this requirement.

Illinois, Indiana, and Iowa do not require dairy producer security.

#### *ATCP 101 - Vegetable*

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers for fresh fruits or vegetables to be licensed as a Wholesale Produce Dealer. Dealers are required to obtain a surety bond and required to maintain trust assets so that assets are freely available to satisfy outstanding obligations. dealer defaults.

Illinois, Iowa, Michigan, and Indiana lack similar programs.

Comments received regarding the Economic Impact of this proposed rule.

No public comments concerning the economic impact of this proposed rule were received on the Department external website.